

## **REMARKS**

### **Status of The Claims**

Claims 7-9, 11-12, 14-26, and 28-32 are canceled.

Claims 4, 5, and 27 are amended.

Claims 33, 34, and 35 are new.

Support for new claims 33 and 34 is in the specification at page 4, lines 10-23; page 23, lines 6-11 and lines 29-31; page 24, lines 1-2; and in Figure 1. Support for new claim 35 is in the specification at page 4, line 8, and at page 6, lines 12-14. Applicants respectfully submit that the foregoing amendments do not introduce new matter. With the current amendments, claims 1-6, 10, 13, 27, and 33-35 are pending.

### **Response To Election/Restrictions**

In an Office Action mailed December 27, 2007, the Examiner restricted the invention under 35 U.S.C. §§ 121 and 372 into thirteen (13) inventions, as follows:

Group I. Claims 1-6 and 10, drawn to glyphosate tolerant alfalfa event J-101 and first method of using same.

Group II. Claims 7-9, drawn to an isolated DNA polynucleotide primer molecule.

Group III. Claim 11, drawn to a method of detecting the presence of DNA corresponding to the alfalfa plant J-101 DNA by performing a nucleic acid amplification reaction.

Group IV. Claim 12, drawn to a method of detecting the presence of DNA corresponding to the alfalfa plant J-101 DNA by using a probe and hybridization.

Group V. Claim 13, drawn to an alfalfa plant comprising a glyphosate tolerant trait genetically linked to a complement of a marker polynucleic acid comprising SEQ ID NO:1 or SEQ ID NO:2.

Group VI. Claims 14-19, drawn to seed and plants grown therefrom of alfalfa plant designated J-163.

Group VII. Claims 20-22, drawn to an isolated DNA polynucleotide primer molecule.

Group VIII. Claim 24, drawn to a method of detecting the presence of DNA corresponding to the alfalfa plant J-163 DNA by performing a nucleic acid amplification reaction.

Group IX. Claim 25, drawn to a method of detecting the presence of DNA corresponding to the alfalfa plant J-163 DNA by using a probe and hybridization.

Group X. Claims 26-28, drawn to an alfalfa plant comprising a glyphosate tolerant trait genetically linked to a complement of a marker polynucleic acid comprising a DNA molecule selected from the group selected from SEQ ID NO:1-8.

Group XI. Claim 29, drawn to an alfalfa plant transformed with the plant expression cassette of pMON20998.

Group XII. Claims 30 and 31, drawn to an admixture of seed of alfalfa plants J-101 and J-163.

Group XIII. Claim 32, drawn to a method of producing essentially weed-free alfalfa hay comprising planting alfalfa plant designated J-101 or J-163.

According to the Examiner "the inventions listed as Groups I-XIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features."

In response, Applicants elect with traverse to pursue Group V and cancel claims of Groups II-IV and VI-XIII. Applicants respectfully disagree with the Examiner in that claims of Group I and Group V should be grouped together for the reasons provided hereafter.

Claims in Groups I and V and new claims 33-35 relate to a single general inventive concept which is an alfalfa plant comprising SEQ ID NO:1 and SEQ ID NO:2. This alfalfa plant is designated J-101, a representative of which is deposited with the ATCC under Accession

No. PTA-4814. (Other representatives include progeny plants derived from ATCC deposit no. PTA-4814.) This J-101 alfalfa plant is characterized by **unique** sequences that have been generated by the insertion of a transgene at a **particular** location in the plant genome. These unique sequences, SEQ ID NO:1 and SEQ ID NO:2, comprise the junction sequences that flank the point of insertion of the transgene. If SEQ ID NO:1 and SEQ ID NO:2 are present in an alfalfa plant, then this plant should be characterized as event J-101; that is, event J-101 and a plant having SEQ ID NO:1 and SEQ ID NO:2 are the same invention.

Also unique to event J-101 are SEQ ID NO:3 and SEQ ID NO:4, which are the junction sequences that comprise SEQ ID NO:1 and SEQ ID NO:2, respectively. SEQ ID NO:3 represents 678 nucleotides at the 5' flank and comprises alfalfa genome and the 5' transgene insert portion. SEQ ID NO:4 represents 581 nucleotides at the 3' flank and comprises the 3' transgene insert portion and the alfalfa genome. SEQ ID NO:1 is an 18-nucleotide fragment of SEQ ID NO:3. Similarly, SEQ ID NO:2 is an 18-nucleotide fragment of SEQ ID NO:4. This is taught in the specification at page 8, lines 30-31; page 23, lines 6-17 and lines 29-31; and page 24, lines 1-2. The relative location of the above-identified sequences with respect to each other and the alfalfa J-101 genome is further illustrated in Figures 2 and 3.

Claims 1-6, 10, and 13 (and new dependent claims 33 and 34) are, therefore, all linked by the same single general inventive concept that is event J-101. These claims represent alternate ways of claiming the same event J-101, either by referring to the event designation J-101, or by referring to the ATCC deposit no. PTA-4814 or to a plant comprising the junction sequences SEQ ID NO:1 and SEQ ID NO:2.

As currently amended, claim 27 pertains to an alfalfa plant, the genome of which produces SEQ ID NO:1 and SEQ ID NO:2 in a DNA amplification method. Therefore, claim 27

is also an alternate way of claiming the same event J-101 and, as such, should be grouped with Groups I and V.

Therefore, Applicants respectfully request that the Examiner searches Groups I and V, claims 1-6, 10, 13, 27, and 33-35 together.

Applicants also respectfully request that, upon the allowance of claims to the invention of Group V, claims that contain all the limitations of the allowable claim be rejoined as a matter of right in accordance with the provisions of MPEP § 821.04. MPEP § 821.04 states that "The propriety of a restriction requirement should be reconsidered when all the claims directed to the elected invention are in condition for allowance, and the nonelected invention(s) should be considered for rejoinder." In addition, MPEP § 821.04(a) states that "a requirement for restriction should be withdrawn when a generic claim, linking claim, or subcombination claim is allowable and any previously withdrawn claim depends from or otherwise requires all the limitations thereof. Claims that require all the limitations of an allowable claim will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104."

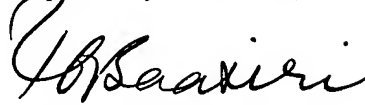
Applicants also reserve the right to file one or more divisional applications directed to the non-elected subject matter.

### **Fees**

A request for a one-month extension of time and the authorization for the associated fee are filed concurrently with this paper. Should any additional fees under 37 C.F.R. §§ 1.16-1.21 be required for any reason relating to the enclosed materials, the Commissioner is hereby

authorized to deduct any additional fees from Howrey LLP Deposit  
Account 08-3038/11899.0237.PCUS00.

Respectfully submitted,



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